

Message Text

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INFO OCT-01 EUR-12 IO-13 ISO-00 L-03 FRB-03 OMB-01
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R 122334Z MAY 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 1521
INFO USMISSION GENEVA
USMISSION USUN

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USOECD

E.O. 11652: N/A
TAGS: EINV, UNCTAD, OECD
SUBJECT: CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY:
MEETING OF OECD AD HOC POLICY GROUP ON MULTINATIONAL
ENTERPRISES, MAY 9-11, 1978

1. SUMMARY: DEVELOPED COUNTRY EXPERTS GENERALLY
CONFIRMED CURRENT POSITIONS ON CODE OF CONDUCT ON
TECHNOLOGY TRANSFER IN PREPARATION FOR NEXT - AND
LAST - MEETING OF UNCTAD INTERGOVERNMENTAL GROUP
OF EXPERTS (IGE), JUNE 26-JULY 7. DISCUSSION REVEALED
DESIRES OF SEVERAL DELEGATIONS, PRINCIPALLY NORDICS, TO
OFFER ADDITIONAL COMPROMISES AT OUTSET OF NEXT IGE ON
A VARIETY OF ISSUES (I.E., NATIONAL REGULATION, APPLI-
CABLE LAW, INSTITUTIONAL MACHINERY). LARGER TECHNOLOGY
SUPPLIERS CONTAINED THESE PRESSURES, ARGUING THAT
FURTHER UNILATERAL MOVEMENT BY GROUP B WOULD BE PRE-
MATURE, AS WELL AS TACTICALLY DANGEROUS WITHOUT
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INDICATIONS OF COMPROMISE FROM THE G-77. EXPERTS
AGREED, HOWEVER, THE OUTLINE OF NEW POSITION ON
RESPONSIBILITIES/GUARANTEES OF ENTERPRISES. B GROUP
CONSENSUS REMAINS STRONGLY IN FAVOR OF VOLUNTARY
GUIDELINES. DELEGATIONS INDICATED THAT LEVEL OF
REPRESENTATION AT NEGOTIATING CONFERENCE IN GENEVA
(OCT. 14-NOV. 1U) WOULD NOT BE AT MINISTERIAL LEVEL.

SWISS DEL ANNOUNCED THAT CURRENT B GROUP COORDINATOR (ROETLISBERGER) WILL BE REASSIGNED THIS SEPTEMBER. IN COMING WEEKS, US WILL NEED TO FOCUS ON SUCCESSOR TO COORDINATOR, AS WELL AS PREPARE MODESTLY REVISED POSITION ON NATIONAL REGULATION MACHINERY AND APPLICABLE LAW IN EVENT G-77 INDICATES FEASIBILITY. END SUMMARY.

2. DEFINITIONS AND SCOPE OF APPLICATION: WORKING GROUP I CHAIRMAN (KAINUGI, JAPAN) OFFERED TO PRESENT A CHAIRMAN'S PAPER AT NEXT IGE IN AN ATTEMPT TO ELIMINATE SOME OF THE BRACKETS IN COMPOSITE DRAFT. GROUP AGREED THAT SUCH A PAPER WOULD BE USEFUL. SEVERAL DELEGATIONS, INCLUDING US, RAISED SPECIFIC QUESTIONS CONCERNING PARTS OF THIS CHAPTER (E.G., APPLICATIONS TO CERTAIN DOMESTIC TRANSACTIONS, AFFILIATED ENTERPRISE TRANSACTIONS). MAJORITY OF DELS RESISTED IN DEPTH DISCUSSION PREFERRING TO WAIT FOR CHAIRMAN'S PAPER.

3. NATIONAL REGULATION: DISCUSSION BEGAN WITH NORDIC GROUP PRESENTATION OF NEW DRAFT CHAPTER ON NATIONAL REGULATION. NORDICS SAW NEED TO REMOVE SOME CONTROVERSIAL ITEMS IN B GROUP POSITION IN AN ATTEMPT TO REACH COMPROMISE WITH G-77. NORDIC PROPOSAL WOULD, INTER ALIA, CHANGE REFERENCE TO INTERNATIONAL LAW TO INTERNATIONAL OBLIGATION IN 3.1 OF CHAPTER; SHORTEN LIMITED OFFICIAL USE

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LIST OF PRINCIPLES ADDRESSED TO NATIONAL REGULATION IN 3.2 TO FIVE POINTS, DROPPING SEVERAL POINTS IN GROUP B'S POSITION PAPER OF 2/18/78. US AND UK DELS POINTED OUT THAT B GROUP HAD PREVIOUSLY AGREED THAT 2/17/78 PROPOSAL WOULD BE CURRENT B GROUP POSITION, THAT IT SHOULD BE SUBMITTED TO G-77 AND THAT IF G-77 REFUSED TO NEGOTIATE ON BASIS OF THAT TEXT, THEN B GROUP WOULD RE-ADOPT ITS ORIGINAL POSITION. MAJORITY OF B GROUP, HOWEVER, WANTED TO GO AHEAD AND REVIEW NORDIC PROPOSAL IN DETAIL WITH A VIEW TO OFFERING IT TO G-77 AT 6TH IGE (JUNE 26-JULY 7) AS A COMPROMISE TEXT AND SO IT WAS DISCUSSED IN SOME DETAIL. SEVERAL MAJOR TECHNOLOGY-SUPPLIER DELEGATIONS (US, UK, FRG) RAISED SPECIFIC OBJECTION TO NORDIC COMPROMISE TEXT, INCLUDING CONCERN THAT FURTHER COMPROMISE AT THIS

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INFO OCT-01 EUR-12 IO-13 ISO-00 L-03 FRB-03 OMB-01
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POINT WOULD CONSTITUTE A REWARD FOR G-77 INTRAN-
SIGENCE ON THIS ISSUE. DRAFTING A NEW COMPROMISE WAS
FINALLY SUSPENDED BUT LIKELY WILL BE RESUMED AT NEXT
IGE FOLLOWING FURTHER DIALOGUE WITH THE G-77.
THROUGHOUT THE DISCUSSION US DEL MADE POINT THAT WE
VIEWED PRINCIPLES ADDRESSED TO NATIONAL REGULATION AS
INDISPENSIBLE ELEMENT OF THE CODE AND THAT WE WOULD
CONTINUE TO RESIST FURTHER CONCESSION UNLESS AND UNTIL
G-77 GAVE INDICATION OF DESIRE TO REACH COMPROMISE.

4. APPLICABLE LAW/SETTLEMENT OF DISPUTES: B GROUP
UNANIMOUSLY AGREED ON IMPORTANCE OF THIS SUBJECT TO
MORE ORDERLY AND EFFECTIVE TECHNOLOGY TRANSFERS. NO
DELEGATIONS ADVOCATED COMPROMISE ON SUBSTANCE BUT
SEVERAL (SPAIN, FRANCE, UK, FRG) SUGGESTED COSMETIC
DEVICES TO AVOID WHAT IS SEEN AS A COLLISION COURSE
WITH G-77PROVISIONS WHICH REFLECT CALVO CLAUSE INSIS-
TENCE ON HOST COUNTRY LAW AND FORUM FOR SETTLEMENT OF
DISPUTES. POSSIBILITIES INCLUDE DRASTIC ABBREVIATION
OF CHAPTER, INCLUDING DROPPING CHAPTER ALTOGETHER, OR
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CURSORY REFERENCE TO KEY POINTS (E.G., PARTIES FREEDOM
TO CHOOSE LAW AND FORUM, AND ENDORSEMENT OF THIRD PARTY
ARBITRATION) IN CHAPTERS ON NATIONAL REGULATION OR ON
PRINCIPLES AND OBJECTIVES. AT URGING OF US DEL, B

GROUP DECIDED, HOWEVER, NOT TO YIELD AT OUTSET OF NEXT IGE. US STATED THAT IT ATTACHED AS MUCH IMPORTANCE TO THIS ISSUE AS TO PRINCIPLES ADDRESSED TO NATIONAL REGULATION AND ARGUED STRONGLY THAT B GROUP SHOULD NOT COMPROMISE ON PRESENT TEXT WITHOUT SIGNIFICANT TRADE OFF FROM G-77. (COMMENT: U.S. DEL IS CONCERNED THAT B GROUP MAY BE WILLING TRADE OFF STRONG PROVISIONS ON APPLICABLE LAW/APPROPRIATE FORUM FOR SUPPORT BY G-77 OF STRONG ARBITRATION PROVISIONS.)

5. INTERNATIONAL MACHINERY: B GROUP REVIEWED G-77 PROPOSAL ON CREATION OF COMMISSION FOR IMPLEMENTATION OF CODE INCLUDING SURVEILLANCE AND MONITORING OF TECHNOLOGY TRANSFERS. GENERAL, BUT NOT UNANIMOUS, OPINION OF GROUP B WAS THAT G-77 PROPOSAL COULD NOT SERVE AS BASIS FOR DISCUSSION. MAJORITY FELT THAT B GROUP SHOULD PRESENT COUNTER PROPOSAL ON MACHINERY AT NEXT IGE WHICH WOULD PROVIDE ONLY FOR PERIODIC REVIEW AND REVISION OF CODE, AS WELL AS FOR INTERPRETATION OF PROVISIONS AND EXCHANGE OF VIEWS ON EXPERIENCE. U.S. RESERVED ITS VIEWS ON DETAILS OF AN APPROACH AND SUGGESTED THAT FORMAL PROPOSAL BY B GROUP SHOULD AWAIT NEGOTIATING CONFERENCE, GIVEN LINK BETWEEN LEGAL NATURE AND INSTITUTIONAL ARRANGEMENTS.

6. SPECIAL TREATMENT: GROUP B REVIEWED POSITION CONCERNING G-77 PROPOSAL THAT SPECIAL TREATMENT (INCLUDING TECHNICAL AID) BE ACCORDED ON A NON-DISCRIMINATORY BASIS. ALL DELEGATIONS EXPRESSED VIEW THAT B GROUP LIMITED OFFICIAL USE

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AID POLICIES, IN FACT, DISCRIMINATE IN FAVOR OF THE LEAST DEVELOPED AND THAT G-77 PROPOSAL WAS THEREFORE NOT ACCEPTABLE.

7. RESPONSIBILITIES AND GUARANTEES: THE GROUP DISCUSSED AT LENGTH A NEW DRAFT PROPOSAL SUBMITTED BY GERMAN REPRESENTATIVES. DRAFT GENERALLY DEFINES CERTAIN PRE-CONTRACTUAL RECOMMENDATIONS AND OBLIGATIONS WHICH SHOULD BE NORMALLY PROVIDED FOR IN TECHNOLOGY TRANSFER AGREEMENTS, AS WELL AS A LIMITED LIST OF GUARANTEES TO BE NEGOTIATED BY THE PARTIES. BY PROVIDING FURTHER QUALIFYING LANGUAGE, THE PROPOSAL GENERALLY REPRESENTS AN IMPROVEMENT OVER THE PREVIOUS GROUP B TEXT. DISCUSSIONS WERE NOT COMPLETED ON THE DRAFT, HOWEVER, AND THE GROUP DECIDED TO CONTINUE DELIBERATIONS IN GENEVA DURING NEXT IGE MEETING, WITH A VIEW TOWARD TABLING THE TEXT AS A NEW GROUP B PROPOSAL BY THE END OF FIRST WEEK OF THAT MEETING.

8. RESTRICTIVE BUSINESS PRACTICES: THE GROUP DECIDED NOT TO DISCUSS THE CHAPEAU SUBMITTED AT THE PREVIOUS IGE MEETING, PRINCIPALLY BECAUSE BOTH G-77 AND GROUP D

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HAD PROMISED TO SUPPLY SPECIFIC COMMENTS AT THE NEXT IGE MEETING. SEVERAL MINOR CHANGES IN THE INDIVIDUAL CLAUSES WERE IDENTIFIED TO PROVIDE SOME LATITUDE FOR NEGOTIATION, IN CASE G-77 SHOULD BE WILLING TO SHOW SOME FLEXIBILITY. IT WAS DECIDED, HOWEVER, NOT TO MAKE ANY FURTHER UNILATERAL CONCESSION. THE GROUP AGREED, IN PRINCIPLE, THAT A NEW CLAUSE ON UNWARRANTED QUALITY CONTACTS COULD BE ACCEPTED, IF PROPERLY PHRASED TO PROVIDE FOR NECESSARY JUSTIFICATION. ALTHOUGH SOME EXPERTS WERE ALSO PREPARED TO CONSIDER ACCEPTING CLAUSES ON LIMITATIONS ON CAPACITY AND UNLIMITED DURATION OF AGREEMENTS, THIS WAS NOT FAVORED BY THE MAJORITY OF THE GROUP. SEVERAL EXPERTS WERE ALSO IN FAVOR OF SUPPORTING AN "EXCEPTIONS" CLAUSE AT SOME STAGE DURING THE NEGOTIATIONS. IT WAS AGREED, HOWEVER, THAT NO OFFER WOULD BE MADE AT THE NEXT IGE MEETING, ALTHOUGH SUBJECT WOULD BE RAISED AGAIN BEFORE THE NEGOTIATING CONFERENCE.

9. ORGANIZATION FOR NEGOTIATING CONFERENCE: US DEL

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LED USEFUL DISCUSSION OF A VARIETY OF QUESTIONS
ASSOCIATED WITH ORGANIZATION OF CONFERENCE (TENTATIVELY
SCHEDULED OCT. 14-NOV. 10) REMINDING GROUP OF OUR
RESERVATION ON PARTICIPATING IN THE CONFERENCE. WE
EMPHASIZED IMPORTANCE OF EARLY AGREEMENT AT CONFERENCE
ON LEGAL NATURE AND SOUNDED OUT OTHER DELEGATIONS
ON UNCTAD SECRETARIAT INTEREST IN CONVENING
A PREPARATORY MEETING TO SETTLE DETAILS OF AGENDA AND
ORGANIZATION. MOST DELEGATIONS OPPOSED IDEA OF PR-
PARATORY MEETING AND ARE RESIGNED TO LAST MINUTE
DECISION ON LEGAL NATURE. GROUP ALSO DID NOT FAVOR
IDEA OF EXPRESSLY LIMITING AGENDA TO SELECTED CHAPTERS,
BELIEVING THAT CONFERENCE INEVITABLY WOULD FAIL TO
CONCLUDE WORK ON ENTIRE CODE. SEVERAL DELEGATIONS IN-
DICATED THAT LEVEL OF REPRESENTATION WOULD BE LIMITED
TO GENEVA AMBASSADORS (FRANCE, UK), NORDICS LIKELY MAY
SEND UNDER SECRETARIES BUT NOT MINISTERS.
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Message Attributes

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